REMARKS

1. Applicant thanks the Examiner for his helpful comments and suggestions.

2. It should be appreciated that Applicant has elected to amend Claims 1 and 6 solely for the purpose of expediting the patent process in a manner consistent with the PTO's Patent Business Goals, 65 Fed. Reg. 54603 (9/8/00). In making such amendments, Applicant has not and does not in any way narrow the scope of protection to which the Applicant considers the invention herein entitled. Rather, Applicant reserves Applicant's right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter presented in this submission.

Hilton Davis / Festo Statement

The amendments to Claims 1 and 6 herein were not made for any reason related to patentability. As for Claims 1 and 6, changes were implemented to clarify the invention. The foregoing amendments are not related to the pending rejections; all amendments were made for reasons other than patentability.

3. Claims 1-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. patent no. 6,502,194 (hereinafter "Berman") in view of U.S. patent application publication no. 2001/0030660 (hereinafter "Zainoulline") in further view of U.S. patent application publication no. 2002/0059237 (hereinafter "Kumagai").

Claims 1, 6, and 16

As to Claims 1, 6, and 16, the Applicant respectfully disagrees. Claims 1, 6, and 16 require that the first small portion of the downloaded songs complies with

royalty requirements. In stark contrast, Berman merely deletes songs after already violating some royalty requirements. The Examiner cites Berman at column 6, lines 25-28. More inclusively, Berman at column 6, lines 21-28 teaches that:

> The buffer memory for audio material is preferably ... RAM ... In addition, the volatility of the buffer memory ensures that the user has no permanent copy of the audio material, thereby ensuring protection of copyrighted material.

It is agreed that Berman teaches placing audio material into volatile RAM memory. It is further agreed, that deleting a song after downloading complies with some copyright requirements. However, the mere fact that Berman deletes a song after playing it does not avoid royalties nor does deleting a song after playing it comply with all copyright requirements. A copyright prevents the unauthorized reproduction or use of the material. Here, Berman both reproduces and uses the copyrighted material. For example, if an entire song is downloaded as taught by Berman, the copyrighted material is infringed. Claims 1, 6, and 16 specifically require that the playtime of the downloaded portion complies with royalty requirements by downloading only the portion complying with a particular royalty requirement. For example, if the royalty requirement allows 5, 10, 15, or 30 seconds of a song to be played, then the first small buffered portion is 5, 10, 15, or 30 seconds, respectively. In this fashion, only if the user plays further into the song than is allowed by the royalty requirement is the rest of the song downloaded. As the Applicant points out in the application as filed at page 3, lines 7-9 and at page 11, line 4, a user may often skip songs or play a short portion of a song. If a downloaded pre-cached period of a song is too long, a royalty is to be paid even if the user plays just a portion of the song or skips the song. The requirement of Claims 1, 6, and 16 to limit the downloaded portion to a length of less than that required by royalty requirements thus prevents payments of unnecessary royalties. The time period of the pre-cached portion of each song as being limited by royalty requirements is not taught by Berman. The Applicant recognized the benefit of pre-buffering while still complying with royalty requirements. Accordingly, the rejection of Claims 1, 6, and 16 and all claims

dependents therefrom under 35 U.S.C. § 103(a) as being unpatentable over Berman in view of Zainoulline and in further view of Kumagai is deemed to be improper.

Claims 7, 10, 17 and 20

As to Claims 7, 10, 17, and 20, the Applicant respectfully disagrees. Claims 7 and 17 step (f) require that as soon as step (d) starts, pre-cached songs in the queue prior to the target song in the pre-determined sequence are deleted. Similarly, Claims 10 and 20 step (l) require deleting the pre-cached portion of all songs in the pre-determined sequence as soon as starting to play the target song. These claim requirements are taught as being important in the Application as filed at least at page 13, line 27 to page 14, line 3; page 12, lines 17-18; page 13, lines 5-8; and Figure 3D. Berman does delete old songs, but only after the buffer is full. Specifically, Berman starts writing at the beginning of the buffer when memory in the buffer is full. The teachings of Berman at column 12, lines 25-30 do not teach that as soon as a song starts playing that pre-cached songs in the sequence are deleted. Early deletion of the songs or their pre-cached portions reduces memory requirements, associated size requirements of the buffering device, and cost. Therefore, the requirement of deleting songs in the queue prior to the target song as soon as the target song starts playing is both novel and beneficial. Accordingly, the rejection of Claims 7, 10, 17, and 20 and all claims dependents therefrom under 35 U.S.C. § 103(a) as being unpatentable over Berman in view of Zainoulline and in further view of Kumagai is deemed to be improper.

Claim 1

Applicant amends Claim 1 in order to clarify the invention and to still further distinguish Claim 1 from the cited art by further requiring that as soon as the target song starts to play, any pre-cached song prior to the target song in said

pre-determined sequence is deleted. Support for the amendment is found in the Application as filed at least at page 13, line 27 to page 14, line 3; page 12, lines 17-18; page 13, lines 5-8; Figure 3D, and Claims 7, 10, 17, and 20. Accordingly, the rejection of Claim 1 and all claims dependents therefrom under 35 U.S.C. § 103(a) as being unpatentable over Berman in view of Zainoulline and in further view of Kumagai is deemed to be overcome.

Claim 6

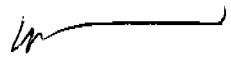
Applicant amends Claim 6 in order to clarify the invention and to still further distinguish Claim 6 from the cited art by further requiring that the number of songs having a first small portion downloaded is maintained at a single positive integer. Support for the amendment is found in the Application as filed at least at Figure 3C; page 10, lines 14-16; and page 7, lines 8-11. Accordingly, the rejection of Claim 6 and all claims dependents therefrom under 35 U.S.C. § 103(a) as being unpatentable over Berman in view of Zainoulline and in further view of Kumagai is deemed to be overcome.

4. New Claims 26-31 are added to the Application. Support for new Claim 26 is found in the Application as filed at least at Figure 1B; page 7, lines 10-11; page 2, lines 13-14; Figure 2C; page 5, lines 18-20; and page 6, lines 13-15. Support for new Claim 27 is found in the Application as filed at least at page 7, lines 6-11. Support for new Claim 28 is found in the Application as filed at least at page 8, lines 17-20. Support for new Claim 29 is found in the Application as filed at least at page 11, lines 20-23. Support for new Claims 30 and 31 is found in the Application as filed at least at page 14, line 24; page 5, line 30; page 6, line 26; and page 6, line 30. Support for new Claim 32 is found in the Application as filed at least at page 5, line 19; Figure 1A; page 14, line 24; page 5, line 30; page 6, line 26; and page 6, line 30. Applicant certifies that no new matter is added to the Application by way of the new claims.

CONCLUSION

In view of the above, the Application is deemed to be in allowable condition. The Examiner is therefore earnestly requested to withdraw all outstanding rejections, allowing the Application to pass to issue as a United States Patent. Should the Examiner have any questions regarding the application, he is respectfully urged to contact Applicant's attorney at (650) 474-8400.

Respectfully submitted,



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